



Appeal Decision

Site visit made on 9 January 2024

by **S Dean MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 January 2024

Appeal Ref: APP/L3245/W/23/3323422

Edinburgh House, New Street, Wem, Shropshire SY4 5DB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Connexus Homes Ltd against the decision of Shropshire Council.
- The application Ref 23/00873/FUL, dated 24 February 2023, was refused by notice dated 25 April 2023.
- The development proposed is described as "the proposed demolition of two-thirds of Edinburgh House and change of use to the remainder (the former Police Station element) to create two floors of one and two bedroom apartments (10 apartments in total, across ground and first floors) with second floor remaining as office space (Class E); and construction of 18 new dwellings on land at Edinburgh House, Wem."

Decision

1. The appeal is allowed and planning permission is granted for the demolition of two-thirds of Edinburgh House and change of use to the remainder (the former Police Station element) to create two floors of one and two bedroom apartments (10 apartments in total, across ground and first floors) with second floor remaining as office space (Class E); and construction of 18 new dwellings on land at Edinburgh House, New Street, Wem, Shropshire SY4 5DB in accordance with the terms of the application, Ref 23/00873/FUL, dated 24 February 2023, subject to the conditions in the Schedule attached to this Decision.

Applications for costs

2. An application for costs was made by Connexus Homes Ltd against Shropshire Council. This application is the subject of a separate Decision.
3. An application for costs was then made by Shropshire Council against Connexus Homes Ltd. This application is also the subject of a separate Decision.

Preliminary Matters

4. Since their decision on the application, the Council has confirmed that it no longer wishes to defend its third reason for refusal. The information submitted in support of the appeal is now considered acceptable to them, subject to a contribution towards visitor management mitigation measures at the Cole Mere Ramsar site.
5. Further to the exchange of Final Comments, the National Planning Policy Framework (the Framework) was revised in December 2023. Both the Council and appellant were provided with the opportunity to comment on the updates made to it, and I have taken it into account in my decision below.

Main Issues

6. Having regard to the above and the decision of the Council, the main issues are whether or not the proposal (i) would provide sufficient on-site open-space, (ii) would have an unacceptable landscape effect, notably with regard to trees on the site, (iii) would provide suitable living conditions for future occupiers with specific regard to noise, and (iv) justifies the loss of a protected employment site.

Reasons

Open space

7. Policy CS6 of the Shropshire Local Development Framework Adopted Core Strategy, March 2011 (the Core Strategy) sets out sustainable design and development principles, and seeks amongst other things to ensure that development is designed to a high quality, respecting and enhancing local distinctiveness, and which, notably for this decision, safeguards residential and local amenity with particular reference to the provision and quality of open space.
8. Policy MD2 of the Shropshire Council Site Allocations and Management of Development Plan, Adopted Plan, December 2015 (the SAMDev Plan) builds on Policy CS6 with more detailed requirements on design, character, amenity, sustainability and open space. For proposals of more than twenty dwellings, it sets out a minimum requirement of 30sqm of open space per person subject to various additional requirements. Although neither the Council nor the appellant have quantified the exact amount by which the proposal falls short of this requirement, it is common ground that a shortfall does exist.
9. Despite this, the houses proposed in the application all have private gardens, there is some other open space within the site, and there is a well-equipped large park with a broad mixture of formal and informal spaces and equipment for all ages a very short walk from the site. Given the proposed layout of the site, the flats, occupants of which are likely to have the greatest need or desire to use public open space (having no private open space of their own) are almost within sight of the park, and the furthest houses are a very short, easy walk from it. As such, it is easily accessible and provides the proposal with high quality open space, sport and recreation facilities which would contribute to the health and wellbeing of future occupants.
10. As noted, the development plan conflict is limited to the numerical requirement in the SAMDev Plan policy. I note the appeal decision which the Council has directed me to and provided a copy of¹. There are some parallels with this case, and whilst consistency in decision making is important and like cases should be decided in a like manner, to my mind there are sufficient distinctions between that case and this (not least that it was a proposal for retirement apartments with balconies and this is for flats and houses with gardens), such that it does not, and cannot reasonably, bear on my interpretation of the acceptability of the provision of open space in this proposal.

¹ Appeal Ref: APP/L3245/W/22/3303317

11. I also note that the Inspector in that case highlighted that compliance with the numerical requirement of Policy MD2 was part of a broader planning judgement. Given that, and given the circumstances of this proposal, where all of the houses have private gardens, and where the apartments are closest to the well-provisioned and easily accessible public open space nearby, I am satisfied that despite failing to meet the numerical requirement of 30sqm per-person on-site, the proposal meets the overarching requirements of both Policy CS6 and Policy MD2 to ensure that development will be designed to a high quality using sustainable design principles and that it appropriately considers the design of landscaping and open space holistically, linking the site to its surroundings functionally and visually.
12. In considering this matter, I also note the need to make efficient and effective use of land, particularly brownfield land in a sustainable location such as this with alternative facilities extremely close by.
13. As such, I find no conflict with Policy CS6 of the Core Strategy, and only minor conflict with the numerical requirement of Policy MD2 of the SAMDev Plan. However, I do not consider that the limited conflict I have identified outweighs the overall compliance of the proposal with the qualitative measures in the relevant policies or the overarching requirements of the development plan. Having regard therefore to the specific circumstances of this proposal, its surroundings and its relationship to them, I find that it would provide sufficient on-site open-space.

Landscape effects

14. The Council alleges a lack of detailed information around landscape effects and potential mitigation measures, as well as issues around detailed design and implementation of any planning permission on the site. I note their concerns over weight-loadings and access for waste collection, but the proposal was accompanied by a Transport Assessment which showed relevant vehicle tracking, and waste and recycling storage areas are shown on the drawings.
15. I turn now to landscape effects relating to the natural environment including trees and other landscaping. Through a combination of the Tree Constraints Plan and the Proposed Site Plan, it is clear which existing trees are to be retained, and which are to be removed. The tree schedule includes an assessment of their condition.
16. At present, but for the limited number of trees around and within the site, it is largely built up; with the large existing office buildings and large areas of car parking. The proposal would break up this extensive built form, and in so doing, retain the most prominent and well-established trees on the site. A number of particularly prominent trees are not in fact within the appeal site area so would be unaffected.
17. Given the suggestion of, and agreement of the appellant to, a condition around approval and then implementation of a landscaping scheme, and a condition requiring compliance with plans which show retained trees, I am satisfied that the proposal would not have an unacceptable landscape effect, notably with regard to trees on the site. To my mind, it would instead achieve a better balance than at present between built and natural form, improving the overall character and appearance of the site and by extension, its immediate surroundings.

18. As such, the proposal would comply with Policies CS3, CS6 and CS17 of the Core Strategy, as well as with Policies MD2 and MD13 of the SAMDev Plan, which seek, amongst other things, to ensure that development proposals incorporate sustainable design elements and features, conserve and enhance the natural environment. The proposal would also comply with government policy in the Framework on achieving well-designed and beautiful places, and conserving and enhancing the natural environment.

Living conditions

19. The site is very close to Wem town centre, adjacent to a reasonably well-used road and near to other noise-generating uses. As such, it is subject to noise from traffic and those nearby uses. This is of course, no different to the existing dwellings on the same side of New Street or those opposite the site. Housing close to a road and other potentially noise-generating uses is not particularly unusual, especially in a location such as this, within an existing settlement.
20. In their submission, the appellant has assessed the noise from the road, school and nearby commercial uses. I note the concerns from the Council over road noise and the potential for noise disturbance from the nearby car valeting business. As the appellants state, this generally operates during working hours, when levels of noise associated with surrounding and nearby commercial and town-centre appropriate and adjacent uses would be expected to generate noise. At the time of my site visit, the business was busy, with jet washing and vacuuming taking place, but this noise was neither intrusive nor particularly noticeable when outside on the site. As such, I do not consider that noise from existing or potential surrounding commercial uses would harm the living conditions of future occupiers, given the acoustic design solutions proposed, the separation distances involved, and the intervening buildings.
21. Whilst I note the concerns of the Council over the acoustic solution proposed by the appellant to deal with road noise in particular, I do not consider that it would lead to unacceptable living conditions for future occupiers. As noted, housing close to roads is not unusual, and the appellants have proposed an acoustic design solution which addresses sources of noise, such that amenity levels would be protected, and suitable living conditions, for the context and location of the site, would be provided.
22. Whilst this may not be the Council's preferred solution, I consider that it is an appropriate one for a brownfield site in a location as sustainable as this one. I also note that what the Council's Environmental Protection team describe as not generally accepted is somewhat different to the position set out in the relevant development plan policies.
23. Taking all of that together, I do not find that the appellant has given insufficient consideration to potential noise issues or related acoustic design measures, in light of the detail of their submissions. I therefore find that the proposal would provide suitable living conditions for future occupiers with specific regard to noise, and would in that respect comply with Policy CS6 of the Core Strategy and Policy MD2 of the SAMDev Plan, which require, amongst other things, consideration of existing and future amenity value as well as the need for good, contextually appropriate design.

24. I also consider that the proposal accords with Framework requirements for achieving well-designed and beautiful places and that the proposed noise mitigation measures would accord with the agent of change principles set out in the Framework.

Employment land

25. The appeal site is a designated employment site, and as such, protected by Policy MD9 of the SAMDev Plan. That policy requires the loss of such sites to development to be justified by evidence of appropriate marketing over a sustained period in order to demonstrate that the land or premises are no longer viable. This information has not been provided, and as such, the proposal conflicts with that policy.

Conditions

26. The Council has suggested a number of conditions to be attached, should planning permission be granted. Having had regard to the requirements of the Framework and the PPG I have imposed standard conditions concerning commencement (1) and compliance with the submitted plans (2).
27. Condition 3 is necessary to ensure that the site is properly drained. Condition 4 ensures that any archaeological remains are properly investigated. Conditions 5, 6 and 8 are necessary to ensure that the completed development can be properly accessed, and condition 7 controls construction traffic. Conditions 9 and 10 ensure that natural environment factors are properly taken into account. Conditions 11, 13 and 14 are necessary to ensure the satisfactory appearance of the completed development, and condition 12 to ensure that construction activities do not harm the living conditions of occupiers of nearby properties.
28. The appellant has objected to the inclusion of Condition 15, which removes permitted development rights for the conversion of the remaining office space on the basis that it is unreasonable and unnecessary, not meeting the relevant tests. Whilst the Framework is clear that such conditions do not usually meet the reasonableness test, in this case, given the concern of the Council around the loss of office space generally, I consider that it is reasonable and necessary, and meets the tests as a whole. As noted in evidence, there is a process set out within the development plan by which that office space could be converted should it no longer be viable.
29. The appellant has confirmed in writing that they have no objection to the terms of the pre-commencement conditions proposed by the Council. It is necessary and reasonable that the information required by these conditions be provided prior to the commencement of development, as these are matters which cannot properly or reasonably be addressed following the commencement of the development.
30. I am therefore satisfied overall that the conditions I have imposed meet the tests in, and requirements of both the Framework and the PPG.

Other matters

31. Although it did not find expression in their decision on the application, the Council did note concerns over the design and appearance of the proposal, particularly the houses within it, relative to the context to the site. However, given the detail set out in the Design and Access Statement, as well as my own observations of the form, style, character and appearance of the mixed context to the site, the existing buildings and their interrelationships, I am satisfied that the proposal is appropriate for its context. It does therefore comply with the requirements of the relevant development plan policies as well as government policy on achieving well-designed and beautiful places as set out in the Framework. Similarly, consultees have commented on the effect of the proposal on the setting of the adjacent Wem Conservation Area (the CA). For the same reasons as set out above, and indeed, because the proposal will replace an open area of car parking and an office building with houses in a contextually-appropriate design, the proposal would not harm the significance of the CA as a heritage asset.
32. The site lies within the indicative recreational catchment area of Cole Mere, part of the Midlands Meres and Mosses Phase 2 Ramsar site. As such, development of the site is considered likely to increase recreational pressure on the site and would therefore have a likely significant effect on the site, its features and lead to an adverse effect on its integrity. The Shropshire Council Cole Mere Management Plan 2020-2025 contains mitigation measures to address increased recreational pressure through visitor management. This takes the form of a financial contribution per-bedroom, secured through an obligation under section 106.
33. Subject to the payment of this contribution towards visitor management measures, it is considered that the proposal would not adversely affect the integrity of the Midlands Meres and Mosses Phase 2 Ramsar site. This conclusion is consistent with that of the Council in their Habitats Regulations Assessment submitted in response to the appeal.

Planning obligation

34. I have had regard to the evidence, the relevant guidance in the Framework and considered whether the requirement for contributions towards the management of the Cole Mere Countryside Heritage Site as part of the Midlands Meres and Mosses Ramsar site, required by the Shropshire Council Cole Mere Management Plan 2020-2025 and securing the proposal as wholly affordable housing meets the tests set out in Regulation 122 of the Community Infrastructure Regulations 2010. I am satisfied that such a contribution would be necessary to make the development acceptable in planning terms, directly relates to the development and is fairly related in scale and kind to the development.
35. A signed and sealed obligation under section 106 of the Act, in the form of a unilateral undertaking from the appellant to the Council has been provided. Although the Council has not confirmed that this undertaking meets their requirements, on the basis of the evidence, I am satisfied that both legally and with regard to what it will secure and deliver it achieves what the Council sought in their evidence to this appeal. On that basis, I consider that the proposal could secure satisfactory contributions towards the matters listed.

Conclusion

36. The proposal conflicts with the development plan insofar as insufficient marketing evidence has been submitted to justify the loss of the protected employment site. Whilst this is the case, it is also important to note that the Council sold the site to the appellant, an affordable housing provider because they themselves no longer had use for it. Whilst I do not have details of that sale process, it seems reasonable to assume that if the site was commercially viable, then the Council, as a public body, would have sought to achieve best value and possibly made different commercial decisions.
37. Even if that were not to be the case, as the appellant highlights, there now exist prior-approval permitted development rights which give rise to more than a merely theoretical prospect of a fall-back position whereby the entire retained building is, or indeed, all of the buildings currently on the site are, converted to residential use with no control over their tenure. When compared to the appeal proposal for entirely affordable housing in both houses and flats, coupled with the retention of one floor of office space and a contribution towards the Ramsar site, the fall-back position would plainly be a worse situation. To my mind this weighs heavily in favour of the appeal proposal.
38. I note the concerns of the Wem Area Climate Action group around partial demolition and the issues of embedded carbon. However, for the same reasons as above, taking all matters together, I find that the balance weighs in favour of the proposal.
39. Although the appellant alleges that the Council cannot provide a five-year supply of housing-sites and that as a result the test at paragraph 11 of the Framework is engaged, the Council claims to have a sufficient supply of housing land, confirmed by the recent Housing Delivery Test results. Given that, I do not consider that the test at paragraph 11 of the Framework is engaged, although the Framework remains a material consideration.
40. I have found above that in respect of open space, landscape effects, living conditions and environmental effects, the proposal accords with the development plan. I have found that it conflicts with it with regard to the evidence required to justify the loss of protected employment land.
41. As set out, that conflict is somewhat limited, and in any event, there are material considerations of substantial weight in favour of the proposal, notably that it will deliver 28 affordable housing units in an area of need on a brownfield site in a sustainable location, close to facilities and services, and secure the retention of some office space.
42. I therefore find that the proposal largely accords with the development plan, and where it does not, there are material considerations of such weight to indicate that a decision be taken other than in accordance with it.
43. Taking all of the above together, the appeal should be allowed, and planning permission granted.

S Dean

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development shall be carried out strictly in accordance with the following approved plans, drawings and documents (including the recommendations therein):
 - PL001_REV B - Location Plan.pdf
 - PL003_REV H - Proposed Site Plan
 - PL031_REV B - Proposed Street Scenes
 - PL023_REV B - Proposed Elevations
 - PL022_REV A - Office Conversion Proposed Floor Plans
 - PL011_REV A - House Type B
 - PL012_REV B - House Type C
 - PL013_REV - - House Type D
 - PL001_REV B - Location Plan
 - PL003_REV H - Proposed Site Plan
 - Hepworth Acoustic Noise Assessment, ref P22-504-R01v2
 - Drainage Strategy, reference ER-LE-GEN-XX-DR-CE-500-S1-A
 - Transport Assessment - February 2023
 - Tree Constraints Plan Drawing Number: ZTL 101
 - Preliminary Ecological Appraisal, reference ZEL_181
 - Bat Emergence Survey Report, reference ZEL_380
3. No development shall take place until a scheme of surface and foul water drainage has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented before the development is occupied/brought into use (whichever is the sooner).
4. No development approved by this permission shall commence until the applicant, or their agents or successors in title, has secured the implementation of a phased programme of archaeological work in accordance with a written scheme of investigation (WSI). This written scheme shall be approved in writing by the Planning Authority prior to the commencement of works.
5. The construction of any new estate street shall not be commenced until full engineering, drainage, street lighting and constructional details of the streets proposed for adoption have been submitted to and approved in writing by the local planning authority. The development shall, thereafter, be constructed in accordance with the approved details.
6. The construction of any new estate street shall not be commenced until an estate street phasing and completion plan has been submitted to and approved in writing by the local planning authority. The estate street phasing and completion plan shall set out the development phases and the standards that estate streets serving each phase of the development will be completed.
7. Prior to the commencement of development, a Construction Traffic Management Plan/Method Statement (CTMP/MS) shall be submitted to and approved in writing by the Local Planning Authority; the CTMP/MS shall be fully implemented in accordance with the approved details and shall remain in force for the duration of the construction period.

8. Prior to the development hereby permitted being first occupied, a car parking management plan (CPMP) shall be submitted to and approved in writing by the Local Planning Authority; the CPMP shall be fully implemented in accordance with the approved scheme and shall remain in force for the lifetime of the development.
9. Prior to first occupation / use of the buildings, the makes, models, and locations of wildlife boxes shall be submitted to and approved in writing by the Local Planning Authority. The following boxes shall be erected on the site:-
 - A minimum of 4 external woodcrete bat boxes or integrated bat bricks, suitable for nursery or summer roosting for small crevice dwelling bat species.
 - A minimum of 10 artificial nests of either integrated brick design or external box design, suitable for a range of species, including starlings (42mm hole, starling specific) sparrows (32mm hole, terrace design), house martins (house martin nesting cups), small birds (28mm or 32mm holes, standard design), robins (open-fronted boxes) and wrens (wren specific).
 - A minimum of 6 swift bricks.
 - 2 hedgehog boxes.
 - 2 invertebrate boxes.

The boxes shall be sited in suitable locations, with a clear flight path (where appropriate) and where they will be unaffected by artificial lighting. Swift bricks should be positioned: 1) Out of direct sunlight; 2) At the highest possible position in the building's wall; 3) In clusters of at least three; 4) 50 to 100cm apart; 5) Not directly above windows; 6) With a clear flightpath to the entrance; and 7) North or east/west aspects preferred. (See <https://www.swift-conservation.org/Leaflet%20-%20-%20Swift%20Nest%20Bricks%20-%20installation%20&%20suppliers-small.pdf>.)

The boxes shall thereafter be maintained for the lifetime of the development.

10. Prior to the erection of any external lighting on the site, a lighting plan shall be submitted to and approved in writing by the Local Planning Authority. The lighting plan shall demonstrate that the proposed lighting will not impact upon ecological networks and/or sensitive features, e.g. bat and bird boxes (required under a separate planning condition). The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust's Guidance Note 08/18 Bats and artificial lighting in the UK. The development shall be carried out strictly in accordance with the approved details and thereafter retained for the lifetime of the development.
11. Prior to any above ground works details will be submitted to the local planning authority and approved in writing with regards to external construction materials in relation to external walls, external roofing materials and external rooflights. The development will be carried out as approved.
12. No construction (and/or demolition) works shall take place before 0730; am on weekdays and 0800 am on Saturdays nor after 1800 pm on weekdays and 1300 pm on Saturdays; nor at anytime on Sundays, Bank or Public Holidays.

13. All trees which are to be retained in accordance with the approved plan shall be protected in accordance with BS 5837: 2012 'Trees in relation to Design, Demolition and Construction recommendations for tree protection'. The protective fencing and cellular confinement systems shall be installed prior to commencing any approved development related activities such as site preparation or construction. The fences shall be maintained throughout the duration of the development and be moved or removed only with the prior approval of the LPA.
14. No above ground works shall be commenced until full details of both hard and soft landscape works (in accordance with Shropshire Council Natural Environment Development Guidance Note 7 'Trees and Development') have been submitted to and approved in writing by the local planning authority. The landscape works shall be carried out in full compliance with the approved plan, schedule and time scales. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall upon written notification from the local planning authority be replaced with others of species, size and number as originally approved, by the end of the first available planting season.
15. The accommodation on the second floor will remain as Office accommodation, (Class E), in perpetuity in accordance with detail as shown on approved drawing "PL022_REV A – Office Conversion Proposed Floor Plans".

End of Schedule of Conditions



Costs Decision

Site visit made on 9 January 2024

by **S Dean MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 January 2024

Costs application in relation to Appeal Ref: APP/L3245/W/23/3323422 Edinburgh House, New Street, Wem, Shropshire SY4 5DB

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Connexus Homes Ltd for a full award of costs against Shropshire Council.
 - The appeal was against the refusal of the Council to grant planning permission for “the proposed demolition of two-thirds of Edinburgh House and change of use to the remainder (the former Police Station element) to create two floors of one and two bedroom apartments (10 apartments in total, across ground and first floors) with second floor remaining as office space (Class E); and construction of 18 new dwellings on land at Edinburgh House, Wem.”
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (the PPG) sets out that parties in planning appeals are expected to behave reasonably. It goes on to say that where a party has behaved unreasonably, and that unreasonable behaviour has caused unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. The PPG sets out examples of behaviour which may give rise to an award of costs against the Council.
3. Against those examples, the applicant claims that the Council acted unreasonably by acting inflexibly, inconsistently and unreasonably in their application of their policies around open space, failed to justify why noise would be an issue in the proposal, determined the proposal on an issue that they knew to be in-hand, and gave no weight to the fall-back position which exists at the appeal site. The applicant claims that this unreasonable behaviour has been compounded by the failure of the Council to approach decisions in a positive and creative way. All of this led to the refusal of the application and the need for an appeal.
4. Much of the applicants' complaint relates to the application period, rather than the appeal itself. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in considering whether or not costs should be awarded. I note however that during the appeal, the Council did withdraw their bat-related reason for refusal following the submission of additional evidence. I find nothing in the Council's handling of the application which bears on whether or not their behaviour during the appeal.

5. In my main decision, I found that elements of the proposal did conflict with the development plan, and it is clear that there were legitimate areas of concern around various factors, including noise and the natural environment. The decision therefore required a degree of balance and the exercise of planning judgement in accordance with the requirements of the Act. That the Council carried out this exercise and reached a different conclusion to that of the applicant, and ultimately me, is not in itself unreasonable.
6. I accept that the Council did not give the fall-back position the level of weight which the applicant wished them to. However, given that any consideration of fall-back would simply have been one of the other material considerations considered in the application, there is nothing before me to suggest that had they given it more weight, their exercise of their own judgement would have resulted in a different result.

Conclusion

7. I therefore find that the Council has not demonstrated behaviour which could be considered unreasonable in the terms of the PPG, and which then resulted in unnecessary or wasted expense. As a result, an award of costs is not warranted, and the application is refused.

S Dean

INSPECTOR